MISCELLANY.

Virginia Board of Law Examiners.

Roanoke, Va., June 26, 1912.

QUESTIONS:

1. In what cases has the Supreme Court of Appeals of Virginia original jurisdiction?

2. In what civil cases has the Supreme Court of Appeals of Virginia appellate jurisdiction irrespective of the amount involved in litigation?

3. What is a bill of review? For what may it be filed? And when is leave of court not necessary? What is the limitation on filing a bill of review?

4. Upon bill of review for errors of law, to what parts of the pleadings and proceedings in the suit will the courts of Virginia look to, and what errors will the court correct?

5. Can the statute of limitations be taken advantage of in Virginia, either at law or in equity, by demurrer? If any exception, state it.

6. A declaration is not demurrable, but does not set out with sufficient clearness the grounds of action, what is the proper proceeding to require the grounds of the action to be sufficiently set out?

7. Under the law and practice in Virginia, what are the essentials in a demurrer to the evidence both on the part of the demurrant and demurree?

8. For what will the court refuse to compel a joinder in a demurrer to the evidence?

9. A recovers a judgment against B, and execution issues on the judgment within the year from its rendition and is returned "no effects" by the sheriff, then B dies, what are the proper proceedings to revive this judgment against B's administrator, and within what time must this proceeding be had to prevent bar of statute of limitations?

10. A recovers a judgment against B, and execution issues on the judgment within a year from its rendition and is returned "no effects," then fifteen years after the return day of said first execution another execution is issued on said judgment and is returned "no effects." Within what time would a suit in equity to subject lands of B to the lien of said judgment have to be brought?

11. J. & S. are partners under the style of Jones & Co., and the firm of Jones & Co. owes debts to sundry creditors; while so indebted S sells and conveys to J all of his interest in the partnership assets, both real and personal, in satisfaction of an individual debt due by S to J; afterwards J becomes financially embarrassed and conveys all of his property including what were social assets of

Jones & Co. to trustees to secure and pay his individual debts; S and the social creditors of Jones & Co. then file a bill to set aside the deed of trust so far as it conveyed what were the social assets of Jones & Co. and to have such social assets applied to the partnership debts of Jones & Co. Can the bill be maintained and the relief prayed for granted? Give briefly the reasons for your answer.

12. S. & J. are partners under the style of Smith & Co.; become insolvent both as a firm and as individuals. In a suit to settle up their affairs, to what debts will the firm assets be first applied, and how will the individual assets be distributed among the firm creditors and the individual creditors under the law in Virginia?

13. What is the effect of a material alteration of a negotiable instrument?

14. What constitutes a material alteration?

15. What constitutes a holder in due course of negotiable paper?

16. What is the law as to warranty of title to personal property?
1st Where the property is not in the possession of the seller?
2d Where the property is in the possession of the seller?
3d Where the property is in the constructive possession of the seller?

17. A sells goods to B at a stated price. Before delivery of goods and payment of contract price B declines to accept goods and pay contract price for them. What is A's remedy and what the measure of damages?

18. In the sale of real estate, what is the law as to implied warranty of title?

19. A sells and conveys to B by proper deed for a valuable consideration a tract of land on March 15, 1910; on the 18th day of March, 1910, A acknowledges said deed before a notary public who certifies the acknowledgment as of March 18, 1910. On March 22, 1910, A conveys all his estate, and includes the land sold and conveyed to B, to C in trust to secure sundry creditors of A, which deed of trust is acknowledged by A and duly admitted to record on March 22, 1910. On March 26, B has his deed from A duly admitted to record. Who has a valid title to said land conveyed to B by A—B or C, the trustee?

20. (a) A dies intestate leaving a widow and children. What part of his personal property does the widow take?
(b) A dies intestate leaving a widow and no children. What part of his personal property does the widow take?

21. A is seized during coverture of a tract of land containing 1,000 acres, and sells and conveys 500 acres of it, by deed in which wife does not unite. A then dies seized of residue of said tract. In what lands is the wife entitled to dower and in what lands should dower be assigned her?

22. I. M. by his last will devises to his son, G. C. M. certain lands

with this proviso: "If my son, G. C. M., shall die without having had lawful issue of his body, the lands so devised him are to be divided among those hereinafter provided," (i. e. his four daughters), the son, G. C. M. died, without having had lawful issue of his body. Was his widow entitled to dower in the lands so devised?

23. W. L., Sr., who died in 1876, by a clause in his will provided as follows: "I further direct that all property and money given in this will to B. H. F., or accruing to her from any of its provisions, shall be vested in W. L., Jr., as trustee, to be held by him in trust for her benefit free from the debts or control of her husband, for and during her natural life, at her death to be divided among her issue according to the statute of distributions and descents of Virginia." B. H. F. had seven children one of whom died in the lifetime of the testator, one died after the testator, but in the lifetime of B. H. F., unmarried and without issue. B. H. F. died in 1905 leaving five children and a husband surviving her. Which of the children took the estate devised in trust, and when did their estates therein vest?

24. An executor deposits funds belonging to his testator's estate in a bank to his individual credit, the bank fails and the funds are lost. Who bears the loss, the executor or the estate?

25. An executor or administrator distributes the estate of his decedent and pays it over to the distributees or legatees without taking refunding bonds of them, leaving debts due by decedent unpaid; the distributees and legatees are insolvent. Who is responsible to the creditors of decedent for the payment of their debts and to what extent?

26. What is the primary fund out of which the debts of a decedent are to be paid?

27. A qualifies as administrator of B, deceased, and gives bond as such administrator with security as required by law. A proceeds to rent out and collect rents from the lands of B for a number of years and in a large amount, and fails to account for the rents so collected. Are the sureties on his administration bond liable for the rents?

28. A child furnishes a parent with a home, and supports, nurses and cares for the parent. Can the child recover of parent's estate the value of his services to parent, and value of parent's board and keep?

29. A steals from B a sum of money consisting of coin and United States currency. A uses the identical coin and currency so stolen from B to pay off a debt due by him to C, which debt is secured by deed of trust on A's real estate. C receives the money in payment of his debt secured by deed of trust on A's realty not knowing that it was stolen. Is B whose money was used to pay off the debt of C so secured by deed of trust, subrogated to C's rights under the deed of trust?

30. Under what circumstances, if any, is a plaintiff who has been guilty of contributory negligence entitled to recover?

31. In the selection of appliances, what is the test of negligence in Virginia?

32. (a) From what power does the right of the State to regulate or control the private business of the citizen grow?

(b) To what does this power extend?

33. If the legislature of Virginia enacts a statute of another state and in the same words, what rule of construction will the courts of Virginia adopt in construing said statute?

34. A is indicted for committing a rape on B. In the same indictment there is a second count charging A with an assault on B with intent to ravish her. On the trial sexual intercourse between A and B at the time of the alleged offence is sworn to by B and admitted by A. The jury brings in a verdict of not guilty of rape as charged in the first count of the indictment, and not guilty of an attempt to rape as charged in the second count of the indictment, but guilty of a simple assault and assesses the fine at $10.00. On motion for a new trial can this verdict stand and judgment be entered upon it?

35. Define forgery.

Successful Applicants.

Following is a list of the successful applicants for license to practice law in Virginia:

Aiken, A. M. Jr.....Danville, Va.
Akerly, Will W.....Lexington, Va.
Albertson, Robert B.....Richmond, Va.
Averill, E. M.....Orange, Va.
Bailey, Preston H.....Lynchburg, Va.
Barnard, Frank W.....Norfolk, Va.
Boyd, John W.....Richmond, Va.
Branaman, G. H.....Waynesboro, Va.
Briggs, Morris F.....Coakley, Va.
Cochran, H. G.....Magnolia, Del.
Curry, John Leslie.....Staunton, Va.
Curry, R. Granville.....Staunton, Va.
Davis, Charles W.....Sedley, Va.
Dewey, William Chapman.....Memphis, Tenn.
Duffey, Louis N.....Alexandria, Va.
Dulany, H. Rozier, Jr.....Upperville, Va.
Dunn, W. S.....Bland, Va.
Fant, Arthur C.....Memphis, Tenn.
Fred, T. Walter.....Blacksburg, Va.
Goode, Benjamin D.....Boydton, Va.
Heazel, Francis J.....Roanoke, Va.

Herman, M. M.....Danville, Va.
Hopkins, Abram Hancock.....Rocky Mount, Va.
Jackson, J. A. Jr.....Franklin, Va.
Johnson, Louis A.....Roanoke, Va.
Keezell, Walter B.....Keezeltown, Va.
Maupin, William G.....Portsmouth, Va.
Moncure, F. P.....Rosslyn, Va.
Moomaw, D. Clovis.....Roanoke, Va.
Moon, Edward H.....Lynchburg, Va.
Moore, Joseph F.....Berryville, Va.
Murray, Philip Wilhelm.....Newport News, Va.
McEntee, S. B.....Upperblack Eddy, Pa.
McPeak, B. T.....Covington, Va.
Parham, Sidney F.....Washington, D. C.
Peck, J. Carl.....Richmond, Va.
Pyle, Joseph G.....Lexington, Va.
Richardson, F. Briggs.....Richmond, Va.
Ruff, Andrew Wallace.....Lexington, Va.
Settle, W. B.....Flint Hill, Va.
Somers, Elmer W.....Bloxom, Va.
Spiller, R. K.....Wytheville, Va.
Stallings, Moody E.....Suffolk, Va.
Swank, W. C.....Harrisonburg, Va.
Taliaferro, A. Barclay.....Orange, Va.
Waters, L. Bradford.....University, Va.
Watskey, Jack.....Richmond, Va.
Watson, O. B.....Roanoke, Va.
Weeks, Kyle M.....Willis, Va.
Williams, Clayton Epes.....Woodstock, Va.
Williams, T. A.....Richmond, Va.
Wine, R. B.....Broadway, Va.

The New Despotism.—[Address by Hon. Wendell Phillips Stafford, of the Supreme Court of the District of Columbia, before the New York County Lawyers' Association, February 17, 1912.]

My native State, in its Bill of Rights, declares that the safety of free government will be found in "a frequent recurrence to fundamental principles." In the few moments allotted to me tonight I wish to examine the judicial recall in the light of those principles.

We have built our institutions on the proposition that the people have the right to rule. Their will is made known through the suffrage. And when opinions differ, as they usually do, the majority must govern. But that is not the whole of the proposition. If it were, there would be no safeguard whatever for the rights of the minority. The majority might appropriate their property. It might reduce them to slavery. It might even take away their lives. The

proposition takes for granted, then, certain guaranties for the protection of the minority. And what are these? They are those elementary rights which no majority, however large, may ever violate. They have been recognized in constitutions and bills of rights, but they were not created by them. They inhere in free government itself, for human freedom is impossible without them. Among these rights there is none more important than this, that no citizen shall be deprived of his liberty or property except by the judgment of the law, and after a trial before an independent and impartial tribunal. We have now come to the keystone of the arch. It is this: The majority of the legal voters cannot constitute itself this tribunal. If it can, it still holds the property and lives of the minority in its hands, subject to its mere will and pleasure, for there is no one who can call it to account.

The cases that may come before the tribunal are of two classes. First, those between individuals merely; second, those in which one of the parties is, in fact, if not in name, the people themselves, or the popular majority. By far the most important and most trying cases will be those of the second class, in which it is contended that some fundamental right of the individual or the minority is being violated. The violation will be attempted under the form of law, and thus the real party upon one side is the people, or the popular majority, whose will has here found expression in the form of law. In such cases how is the independence and impartiality of the tribunal to be secured? How except by removing it as far as possible from dictation by either party? Let it be remembered that the tribunal, the court, has been created and its members chosen by one of the parties to the controversy; namely, the people. Clearly, then, the only security the other party can have is this: That the tribunal, once it is created and its members chosen, shall be permitted to decide without further interference. If it is to be checked and overawed by one of the parties; if, the moment it decides the case against that party, its power is to be taken from it and bestowed upon others, then it is the party that decides the case, not the tribunal.

Let us inquire whether this reasoning fits the facts of the present time. Take but one example. A popular majority, through the legislature elected by it, or more directly by the initiative and referendum, enacts a statute requiring railroads to carry passengers for one cent a mile. A test case comes before the court. The railroad insists that the act robs it of its property, and the court so holds. Thereupon the same popular majority votes the judges out of office, and elects to fill their places judges who will reverse the decision. Has not the popular majority constituted itself the court? May a man be the judge in his own case?

Let us test the measure by another fundamental principle. A

despot makes the law and also decides whether the particular case comes within the law. Or he may just as well dispense with the law, since no one can question his decision that the case comes within it. On the other hand, in a free government one body makes the law, the general rule, while another body decides whether the particular case falls within the rule. Thus the citizen is protected. We call it keeping the legislative and judicial departments separate. In a despotism they are united. In a free government they are separate. Now if the popular majority not only makes the law but also decides whether a given case falls within it, then the legislative and judicial powers are united in the same body and the government ceases to be free and becomes a despotism.

If it be objected that the argument proves too much, since by this reasoning the rule should be, once a judge always a judge, my answer is twofold. First, I hold with Hamilton that the judicial tenure ought to be nothing less than during good behavior. Second, if the judges are to be elected for limited terms, those terms should be at least of such a length that the judge's reelection should not depend upon his decision of some particular case or question, but upon his general worthiness to be a judge.

The argument for the recall assumes that judges are only agents of the majority, and easily reaches the conclusion that when the agent fails to satisfy his principal he may rightly be recalled. The fallacy in the argument is in the assumption that the judge is an agent. He is not an agent in any proper sense of that word. He is not the agent of either party to a cause. He is not even the agent of both parties. If his duty were to trade and compromise between them, he might be considered the agent of both. But that is not his duty. His duty is to decide. It is not for him to please. nor to seek to please, either party. It is for him to decide the question between them as law and justice requires.

But some one will say: "The Constitution with its guaranties was adopted by the popular majority. Can you not trust it to abide by the work of its own hands?" Sir, I believe in the people, but I should not wish to see even the Bill of Rights subjected to the chances of every popular election. The making of a Constitution is a work of momentous import Statutes stand for what the people think from year to year. Constitutions stand for what they think from generation to generation. When a change in the organic law is proposed; when society has been stirred to its depths by the interest excited; when the strongest intellects of the time have spent their powers upon the question; when it has been debated in all its bearings, and when the people, conscious of the tremendous issues involved, have solemnly weighed and decided for themselves and their posterity, I am wifling to leave the question in their hands. But what resemblance has that to the proceeding we are discussing

now? Another thing. When a Constitution is to be adopted or amended the question submitted is in its nature general. It is a law. But when a controversy arises before a court it is concrete, and the question is apt to be whether the case falls within the law. Perhaps no one would be ready to propose that the Constitution should be changed, and yet a multitude may wish to have decided that the party is not entitled to the protection of the Consitution in the case at bar. Now that is a question which a popular assembly is not adapted to try nor qualified to decide. It is necessarily a question for a court.

If judicial opinions are to be reviewed at popular elections, why should not judges be instructed beforehand how to decide questions that are certain to arise? They would be saved the possibility of making a mistake. If that is not to be done the greatest jurist will be the one who shows himself most expert and nimble in keeping on the side of the majority.

When the King asked Lord Coke how he would decide a certain question, if it came before him, he replied, "When that case arises I will decide it as shall befit a judge." History has recorded the answer with a proud smile. When democracy asks that question of her judges shall they answer with less dignity and self-respect than the Chief Justice of the Stuarts? When Prince Hal struck the Lord Chief Justice on the bench and went to jail for it, the King shed happy tears that he had a judge who dared administer the law even to the Heir Apparent, and that he had a son who in his sober second thought accepted the judgment of the law. Has free America in the twentieth century less reverence for law than the House of Lancaster had five hundred years ago? In one respect the Roman tribunes performed for the Roman people the office that our judges do for us—they had the power to veto laws that struck at fundamental rights. You remember that when the plebs were advised to do away with tribunes by those whose purpose had been thwarted by them the tribunes recalled the people to their senses with a fable. Once upon a time, they said, the wolves advised the sheep to get rid of their watch-dogs, because they interfered with the sheep going where they pleased, and were really the only obstacle to a perfect understanding between the forest and the fold! When, afterwards, the people did give up their tribunes, they lost their liberty, and they never regained it till they got them back. Your watch-dog may annoy the sheep when they wish to go astray —he may even nip one of them now and then, as he tries to bring them back, but let the flock think twice before they exchange the watch-dog for the wolf.

Our day has witnessed the first widespread and determined effort to secure the establishment of a permanent international court. The world's confidence in courts has become so deeply rooted that

we have reason to hope that the end of war is in sight. Is it not remarkable that our day should have witnessed a serious and calculated effort to abolish courts altogether? That two such propositions should have been the birth of the same time will be one of the marvels of history.

The proposal to recall judges for unpopular decisions is nothing less than a proposal to abolish courts. To abolish courts is to abolish freedom. However innocent the motives of those who propose this measure, no deadlier blow was ever aimed at the heart of human liberty than this. The people have only to understand it to reject it. They are not ready to throw away the fruits of their long labors and unnumbered battles, labors endured and battles waged for this very thing, that under the broad shield of a sacred and inviolable justice the weakest or most hated might rest secure in their liberty, their property, their lives. They will discover the tyrant under this flattering disguise. And in the end they will consign to obloquy the names of those who would have tempted them to their destruction.—Washington Law Reporter.